

# Journal of the Senate

WEDNESDAY, MARCH 14, 2018

Pursuant to the Senate Rules, in the absence of the President, the Senate was called to order by the President *pro tempore*.

## Devotional Exercises

A moment of silence was observed in lieu of devotions.

## Bill Referred to Committee on Appropriations

### S. 53.

Senate bill of the following title, appearing on the Calendar for notice and carrying an appropriation or requiring the expenditure of funds, under the rule was referred to the Committee on Appropriations:

An act relating to a universal, publicly financed primary care system.

## Message from the Governor Appointments Referred

A message was received from the Governor, by Brittney L. Wilson, Secretary of Civil and Military Affairs, submitting the following appointments, which were referred to committees as indicated:

Humbert, Alicia Sacerio of Northfield - Magistrate of the Family Court - from March 14, 2018, to March 31, 2019.

To the Committee on Judiciary.

Kline, Scot L. of Essex - Superior Judge, - from March 13, 2018, to March 31, 2023.

To the Committee on Judiciary.

Markowski, David of Florence - Member of the Transportation Board - from March 1, 2018, to February 28, 2021.

To the Committee on Transportation.

## Bills Passed

Senate bills of the following titles were severally read the third time and passed:

**S. 166.** An act relating to the provision of medication-assisted treatment for inmates.

**S. 173.** An act relating to sealing criminal history records when there is no conviction.

**S. 206.** An act relating to business consumer protection for point-of-sale equipment leases.

**S. 224.** An act relating to co-payment limits for visits to chiropractors.

**S. 261.** An act relating to mitigating trauma and toxic stress during childhood by strengthening child and family resilience.

**Bill Passed**

**S. 229.**

Senate bill entitled:

An act relating to State Board of Education approval of independent schools.

Was taken up.

Thereupon, pending third reading of the bill, Senators Campion and Sears moved to amend the bill in Sec. 3, in 16 V.S.A. § 2973, by striking out subsection (d) in its entirety and inserting in lieu thereof a new subsection (d) to read as follows:

(d) If an approved independent school enrolls a student under subdivision (a)(1) of this section but does not have the staff or State Board certification to provide special education services in the specific disability category that the student requires, then:

(1) The LEA, in consultation with the approved independent school and the Agency of Education, shall determine what special education services and supports the school is able to provide to the student.

(2) The LEA shall, for an interim period and at its cost, provide such additional staff and other resources to the approved independent school as are necessary to support the student. The interim period shall end upon the earlier of:

(A) the date upon which the approved independent school is able to provide these services directly and has the appropriate State Board certification; or

(B) the end of the academic year during which the student has been enrolled for the entirety of the academic year.

(3) If the school does not have all the required staff and resources and the appropriate State Board certification by the end of the academic year during which the student has been enrolled for the entirety of the academic

year as required under subdivision (2) of this subsection, then, in the event that the State Board determines that the school has failed to make good faith and reasonable efforts to secure the required staff, resources, and certification, the State Board may take any action that is authorized by section 166 of this title.

Thereupon, pending the question, Shall the bill be amended as recommended by Senators Campion and Sears?, Senator Campion requested and was granted leave to withdraw the recommendation of amendment.

Thereupon, the bill was read the third time and passed.

### **Bill Amended; Third Reading Ordered**

#### **S. 168.**

Senator Soucy, for the Committee on Economic Development, Housing and General Affairs, to which was referred Senate bill entitled:

An act relating to employment protection for volunteer emergency responders.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 21 V.S.A. § 495o is added to read:

#### § 495o. VOLUNTEER EMERGENCY RESPONDERS

(a) As used in this section:

(1) “Emergency medical personnel” shall include “emergency medical personnel,” “ambulance service,” “emergency medical services,” and “first responder service” as defined in 24 V.S.A. § 2651.

(2) “Firefighter” shall have the same meaning as in 20 V.S.A. § 3151(3).

(3) “Volunteer emergency responder” means a volunteer firefighter or volunteer emergency medical personnel.

(b) An employer shall not discharge, discriminate, or retaliate against an employee because the employee was absent from work to perform duty as a volunteer emergency responder.

(c) This section shall not apply to any public safety agency or provider of emergency medical services if, as determined by the employer, the employee’s absence would hinder the availability of public safety or emergency medical services.

(d) An employee that is a volunteer emergency responder shall notify his or her employer at the time of hire or at the time that the employee becomes a volunteer emergency responder and shall provide the employer with a written

statement signed by the chief of the volunteer fire department or the designated director or chief of the ambulance service or emergency medical services stating that the employee is a volunteer emergency responder.

(e) Nothing in this section shall prohibit an employer from requiring an employee to provide reasonable notice that the employee is leaving work to respond to an emergency.

(f)(1) An employer shall not be required to compensate an employee for time that an employee is absent from employment while performing his or her duty as a volunteer emergency responder.

(2)(A) An employer may require an employee to use any accrued time off for time that the employee is absent from work while performing his or her duty as a volunteer emergency responder, provided that the employer shall compensate the employee for any accrued time off used at his or her normal hourly wage rate.

(B) Notwithstanding subdivision (A) of this subdivision (2), an employer shall not prevent an employee from performing his or her duty as a volunteer emergency responder due to a lack of accrued time off or paid leave.

## Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

And that when so amended the bill ought to pass.

Senator Soucy moved to substitute a recommendation of amendment for the recommendation of amendment of the Committee on Economic Development, Housing and General Affairs as follows:

By striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 21 V.S.A. § 495o is added to read:

### § 495o. VOLUNTEER EMERGENCY RESPONDERS

(a) As used in this section:

(1) “Emergency medical personnel” shall include “emergency medical personnel,” “ambulance service,” “emergency medical services,” and “first responder service” as defined in 24 V.S.A. § 2651.

(2) “Firefighter” shall have the same meaning as in 20 V.S.A. § 3151(3).

(3) “Volunteer emergency responder” means a volunteer firefighter or volunteer emergency medical personnel.

(b) An employer shall not discharge, discriminate, or retaliate against an employee because the employee was absent from work to perform duty as a volunteer emergency responder.

(c) This section shall not apply to:

(1) a public safety agency or provider of emergency medical services if, as determined by the employer, the employee's absence would hinder the availability of public safety or emergency medical services; or

(2) an employer that provides goods or services to the general public if the employee's absence would require the employer to suspend all business operations at a location that is open to the general public.

(d) An employee that is a volunteer emergency responder shall notify his or her employer at the time of hire or at the time that the employee becomes a volunteer emergency responder and shall provide the employer with a written statement signed by the chief of the volunteer fire department or the designated director or chief of the ambulance service or emergency medical services stating that the employee is a volunteer emergency responder.

(e) Nothing in this section shall prohibit an employer from requiring an employee to provide reasonable notice that the employee is leaving work to respond to an emergency.

(f)(1) An employer shall not be required to compensate an employee for time that an employee is absent from employment while performing his or her duty as a volunteer emergency responder.

(2)(A) An employer may require an employee to use any accrued time off for time that the employee is absent from work while performing his or her duty as a volunteer emergency responder, provided that the employer shall compensate the employee for any accrued time off used at his or her normal hourly wage rate.

(B) Notwithstanding subdivision (A) of this subdivision (2), an employer shall not prevent an employee from performing his or her duty as a volunteer emergency responder due to a lack of accrued time off or paid leave.

## Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

Which was agreed to.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment as substituted was agreed to, and third reading of the bill was ordered.

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**Bills Amended; Third Readings Ordered****S. 180.**

Senator Baruth, for the Committee on Economic Development, Housing and General Affairs, to which was referred Senate bill entitled:

An act relating to the Vermont Fair Repair Act.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

**Sec. 1. FINDINGS**

The General Assembly finds:

(1) Manufacturers can make it difficult or impossible—whether inadvertently or intentionally—for consumers or independent repair technicians to fix their consumer electronic products, even for such minor repairs as replacing a battery or screen.

(2) Manufacturers may limit access to information or parts to correct defects to only those customers who are under warranty; may refuse access to information or parts for owners of older models; and may refuse to stock or sell parts at fair and reasonable prices. Consequently, consumers are often left with few options other than to buy new.

(3) Modern repairs involve electronics: any product that can have embedded electronics will eventually have embedded electronics. Repairing those electronics requires information, parts, firmware access, and tooling specifications from the product designers.

(4) The knowledge and tools to repair and refurbish consumer electronic products should be distributed as widely and freely as the products themselves. In contrast to centralized manufacturing, reuse must be broadly distributed to achieve economies of scale.

(5) Many manufacturers have made commitments to sustainability, repair, and reuse, and the innovation economy of Vermont and the United States has had many positive economic and environmental impacts. Legislation that further promotes extending the lifespan of consumer electronic products can create jobs and benefit the environment.

(6) As demonstrated by Massachusetts's experience with a right to repair initiative concerning automobiles in 2014, which resulted in a compromise between manufacturers and independent repair providers to adopt a voluntary nationwide approach for providing diagnostic codes and repair data available in a common format by the 2018 model year, legislative action to

secure a right to repair can achieve positive benefits for manufacturers, independent businesses, and consumers.

Sec. 2. RIGHT TO REPAIR TASK FORCE; REPORT

(a) Creation. There is created the Right to Repair Task Force.

(b) Membership. The Task Force shall be composed of the following five members:

(1) one current member of the House of Representatives, appointed by the Speaker of the House;

(2) one current member of the Senate, appointed by the Committee on Committees;

(3) the Attorney General or designee;

(4) the Secretary of Commerce and Community Development or designee; and

(5) the Secretary of Digital Services or designee.

(c) Stakeholder engagement. The Task Force shall solicit testimony and participation in its work from representatives of relevant stakeholders, including authorized and independent repair providers, and consumer, environmental, agricultural, medical device, and other trade groups having an interest in consumer or business electronic product repairs.

(d) Powers and duties. The Task Force shall review and consider the following issues relating to potential legislation designed to secure the right to repair consumer electronic products, including personal electronic devices such as cell phones, tablets, and computers:

(1) the scope of products to include;

(2) economic costs and benefits, including economic development and workforce opportunities;

(3) effects on the cost and availability to consumers of new and used consumer electronic products in the marketplace, including diminished availability of refurbished products for secondary users;

(4) consequences or impacts for intellectual property and trade secrets;

(5) environmental and economic costs of a “throw-away” economy;

(6) legal issues, including potential for alignment or conflict with federal law, and litigation risks;

(7) issues relating to privacy and security features in electronic products; and

(8) any other issues the Task Force considers relevant and necessary to accomplish its work, including regulation of business consumer products or other products the Task Force finds appropriate.

(e) Assistance. The Task Force shall have the administrative, legal, and fiscal assistance of the Office of Legislative Council and the Joint Fiscal Office. Relevant agencies and departments within State government shall provide their technical and other expertise upon request of the Task Force.

(f) Report. On or before December 15, 2018, the Task Force shall submit a written report to the Senate Committee on Economic Development, Housing and General Affairs and the House Committee on Commerce and Economic Development with its findings and any recommendations for legislative action, including specific findings and recommendations concerning personal electronic devices such as cell phones, tablets, and computers.

(g) Meetings.

(1) The Office of Legislative Council shall call the first meeting of the Task Force to occur on or before August 1, 2018.

(2) The legislative members of the Task Force shall serve as co-chairs.

(3) A majority of the membership shall constitute a quorum.

(4) The Task Force shall cease to exist on December 15, 2018.

(h) Compensation and reimbursement. For attendance at meetings during adjournment of the General Assembly, a legislative member of the Task Force serving in his or her capacity as a legislator shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for not more than five meetings. These payments shall be made from monies appropriated to the General Assembly.

### Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

And that when so amended the bill ought to pass.

Senator Westman, for the Committee on Appropriations, to which the bill was referred, reported that the bill ought to pass when so amended.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of amendment was agreed to, and third reading of the bill was ordered.

### S. 225.

Senator Lyons, for the Committee on Health and Welfare, to which was referred Senate bill entitled:



An act relating to access to Vermont Prescription Monitoring System data by academic researchers and coverage by commercial health insurers for costs associated with medication-assisted treatment.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. COSTS ASSOCIATED WITH MEDICATION-ASSISTED  
TREATMENT; PILOT PROGRAMS

(a) The Commissioner of Vermont Health Access shall develop pilot programs in which one or more health insurers contribute funding to providers who are not affiliated with an authorized treatment program but who meet federal requirements for use of controlled substances in the pharmacological treatment of opioid addiction in order to support the costs of funding licensed alcohol and drug counselors and other medical professionals who support this work. The Commissioner shall collaborate with one or more health insurers; a large, integrated federally qualified health center; and a multisite Blueprint community in carrying out the requirements of this section. The pilot programs shall:

(1) align with current Blueprint funding or other payment models that may be developed in consultation with stakeholders for opioid treatment programs and other providers who are not affiliated with an authorized treatment program but who meet federal requirements for use of controlled substances in the pharmacological treatment of opioid addiction;

(2) align with potential integration of Medicare funding into opioid treatment programs and other providers who are not affiliated with an authorized treatment program but who meet federal requirements for use of controlled substances in the pharmacological treatment of opioid addiction; and

(3) be designed to allow the integration into accountable care organization funding.

(b) On or before January 15, 2019, the Commissioner shall report to the Senate Committee on Health and Welfare and House Committees on Health Care and on Human Services regarding the design and construction of the pilot programs and any recommendations for legislative action.

(c) As used in this section:

(1) "Health insurer" means any health insurance company, nonprofit hospital and medical service corporation, managed care organization, and to the extent permitted under federal law any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by public and

private entities. The term shall include the administrator of the health benefit plan offered by the State of Vermont to its employees and the administrator of any health benefit plan offered by any agency or instrumentality of the State to its employees. The term shall not include stand-alone dental plans or benefit plans providing coverage for a specific disease or other limited benefit coverage.

(2) "Provider" means physicians, advanced practice registered nurses, and physician assistants.

## Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

And that after passage the title of the bill be amended to read:

An act relating to pilot programs for coverage by commercial health insurers of costs associated with medication-assisted treatment.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

## S. 222.

Senator Sears, for the Committee on Judiciary, to which was referred Senate bill entitled:

An act relating to technical amendments to civil and criminal procedure statutes.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. § 8007(c) is amended to read:

(c) An assurance of discontinuance shall be in writing and signed by the respondent and shall specify the statute or regulation alleged to have been violated. The assurance of discontinuance shall be simultaneously filed with the Attorney General and the Environmental Division. The Secretary or the Natural Resources Board shall post a final draft assurance of discontinuance to its website and shall provide a final draft assurance of discontinuance to a person upon request. When signed by the Environmental Division, the assurance shall become a judicial order. Upon motion by the Attorney General made within ~~10~~ 14 days ~~of~~ after the date the assurance is signed by the Division and upon a finding that the order is insufficient to carry out the purposes of this chapter, the Division shall vacate the order.

Sec. 2. 12 V.S.A. § 1 is amended to read:

§ 1. RULES OF PLEADING, PRACTICE, AND PROCEDURE; FORMS

The Supreme Court is empowered to prescribe and amend from time to time general rules with respect to pleadings, practice, evidence, procedure, and forms for all actions and proceedings in all courts of this State. The rules thus prescribed or amended shall not abridge, enlarge, or modify any substantive rights of any person provided by law. The rules when initially prescribed or any amendments thereto, including any repeal, modification, or addition, shall take effect on the date provided by the Supreme Court in its order of promulgation, unless objected to by the ~~Joint~~ Legislative Committee on Judicial Rules as provided by this chapter. If objection is made by the ~~Joint~~ Legislative Committee on Judicial Rules, the initially prescribed rules in question shall not take effect until they have been reported to the General Assembly by the Chief Justice of the Supreme Court at any regular, adjourned, or special session thereof, and until after the expiration of 45 legislative days of that session, including the date of the filing of the report. The General Assembly may repeal, revise, or modify any rule or amendment thereto, and its action shall not be abridged, enlarged, or modified by subsequent rule.

Sec. 3. 12 V.S.A. § 2 is amended to read:

§ 2. DEFINITIONS

As used in sections 3 and 4 of this chapter:

(1) “Adopting authority” means the Chief Justice of the Supreme Court or the ~~administrative judge~~ Chief Superior Judge, where appropriate;.

(2) “Court” means the Supreme Court, except in those instances where the statutes permit rules to be adopted by the ~~administrative judge~~ Chief Superior Judge, in which case, the word “court” means the ~~administrative judge~~; Chief Superior Judge.

\* \* \*

Sec. 4. 12 V.S.A. § 701 is amended to read:

§ 701. SUMMONS

(a) Any law enforcement officer authorized to serve criminal process or a State’s Attorney may summon a person who commits an offense to appear before Superior Court by a summons in such form as prescribed by the Court Administrator, stating the time when, and the place where, the person shall appear, signed by the enforcement officer or State’s Attorney and delivered to the person.

\* \* \*

~~(d) A person who does not so appear in response to a summons for a traffic offense as defined in 23 V.S.A. § 2201 shall be fined not more than \$100.00. [Repealed.]~~

Sec. 5. 12 V.S.A. § 3125 is amended to read:

§ 3125. PAYMENT OF TRUSTEE'S CLAIM BY CREDITOR

When it appears that personal property in the hands of a person summoned as a trustee is mortgaged, pledged, or liable for the payment of a debt due to him or her, the court may allow the attaching creditor to pay or tender the amount due to the trustee, and he or she shall thereupon deliver such property, as ~~hereinbefore~~ provided in this subchapter, to the officer holding the execution.

Sec. 6. 12 V.S.A. § 3351 is amended to read:

§ 3351. ATTACHMENT, TAKING IN EXECUTION, AND SALE

Personal property not exempt from attachment, subject to a mortgage, pledge, or lien, may be attached, taken in execution, and sold as the property of the mortgagor, pledgor, or general owner, in the same manner as other personal property, except as ~~hereinafter~~ otherwise provided in this subchapter.

Sec. 7. 18 V.S.A. § 4245 is amended to read:

§ 4245. REMISSION OR MITIGATION OF FORFEITURE

(a) On petition filed within 90 days ~~of~~ after completion of a forfeiture proceeding, ~~the claims commission established in 32 V.S.A. § 931~~ a court that issued a forfeiture order pursuant to section 4244 of this title may order that the forfeiture be remitted or mitigated. The petition shall be sworn, and shall include all information necessary for its resolution or shall describe where such information can be obtained. Upon receiving a petition, the ~~claims commission~~ court shall investigate and may conduct a hearing if in its judgment it would be helpful to resolution of the petition. The ~~claims commission~~ court shall either grant or deny the petition within 90 days.

(b) The ~~claims commission~~ court may remit or mitigate a forfeiture upon finding that relief should be granted to avoid extreme hardship or upon finding that the petitioner has a valid, good faith interest in the property which is not held through a straw purchase, trust, or otherwise for the benefit of another and that the petitioner did not at any time have knowledge or reason to believe that the property was being or would be used in violation of the law.

Sec. 8. 18 V.S.A. § 4474g(b) is amended to read:

(b) Prior to acting on an application for a Registry identification card, the Department shall obtain with respect to the applicant a Vermont criminal

history record, an out-of-state criminal history record, and a criminal history record from the Federal Bureau of Investigation. Each applicant shall consent to the release of criminal history records to the Department on forms developed by the Vermont Crime Information Center. A fingerprint-supported, out-of-state criminal history record and a criminal history record from the Federal Bureau of Investigation shall be required only every three years for renewal of a card for a dispensary owner, principal, and financier.

Sec. 9. REPEAL

2017 Acts and Resolves No. 11, Sec. 60 (amending 32 V.S.A. § 5412) is repealed.

Sec. 10. 3 V.S.A. § 163 is amended to read:

§ 163. JUVENILE COURT DIVERSION PROJECT

(a) The Attorney General shall develop and administer a juvenile court diversion project for the purpose of assisting juveniles charged with delinquent acts. ~~Rules which were adopted by the Vermont Commission on the Administration of Justice to implement the juvenile court diversion project shall be adapted by the Attorney General to the programs and projects established under this section.~~ In consultation with the diversion programs, the Attorney General shall adopt a policies and procedures manual in compliance with this section.

(b) The diversion ~~project program~~ administered by the Attorney General shall ~~encourage the development~~ support the operation of diversion ~~projects~~ programs in local communities through grants of financial assistance to, ~~or by contracting for services with,~~ municipalities, private groups, or other local organizations. The Attorney General may require local financial contributions as a condition of receipt of project ~~grants~~ funding.

\* \* \*

Sec. 11. 3 V.S.A. § 164 is amended to read:

§ 164. ADULT COURT DIVERSION PROGRAM

(a) The Attorney General shall develop and administer an adult court diversion program in all counties. ~~The program shall be operated through the juvenile diversion project. The~~ In consultation with Diversion programs, the Attorney General shall adopt only such rules as are necessary to establish an adult court diversion program for adults a policies and procedures manual, in compliance with this section.

\* \* \*

(c) The program shall ~~encourage the development~~ support the operation of diversion programs in local communities through grants of financial assistance to, or contracts for services with, municipalities, private groups, or other local organizations. The Attorney General may require local financial contributions as a condition of receipt of program ~~grants~~ funding.

\* \* \*

(e) All adult court diversion programs receiving financial assistance from the Attorney General shall adhere to the following provisions:

(1) The diversion program shall accept only persons against whom charges have been filed and the court has found probable cause, but are not yet adjudicated. The prosecuting attorney may refer a person to diversion either before or after arraignment and shall notify in writing the diversion program and the court of his or her intention to refer the person to diversion. The matter shall become confidential when notice is provided to the court. If a person is charged with a qualifying crime as defined in 13 V.S.A. § 7601(4)(A) and the crime is a misdemeanor, the prosecutor shall provide the person with the opportunity to participate in the court diversion program unless the prosecutor states on the record at arraignment or a subsequent hearing why a referral to the program would not serve the ends of justice. If the prosecuting attorney refers a case to diversion, the prosecuting attorney may release information to the victim upon a showing of legitimate need and subject to an appropriate protective agreement defining the purpose for which the information is being released and in all other respects maintaining the confidentiality of the information; otherwise files held by the court, the prosecuting attorney, and the law enforcement agency related to the charges shall be confidential and shall remain confidential unless:

- (A) the ~~Board~~ diversion program declines to accept the case;
- (B) the person declines to participate in diversion;
- (C) the ~~Board~~ diversion program accepts the case, but the person does not successfully complete diversion; or
- (D) the prosecuting attorney recalls the referral to diversion.

\* \* \*

(7)(A) ~~The~~ Irrespective of whether a record was expunged, the adult court diversion program shall maintain sufficient records so that the reasons for success or failure of the program in particular cases and overall can be investigated by program staff. These records shall include a centralized statewide filing system that will include the following information about individuals who have successfully completed an adult court diversion program:

- (i) name and date of birth;
- (ii) offense charged and date of offense;
- (iii) place of residence;
- (iv) county where diversion process took place; and
- (v) date of completion of diversion process.

(B) These records shall not be available to anyone other than the participant and his or her attorney, State's Attorneys, the Attorney General, and directors of adult court diversion programs.

(C) Notwithstanding subdivision (B) of this subsection (e), the Attorney General shall, upon request, provide to a participant or his or her attorney sufficient documentation to show that the participant successfully completed diversion.

\* \* \*

(g)(1) Within 30 days ~~of~~ after the two-year anniversary of a successful completion of adult diversion, the court shall provide notice to all parties of record of the court's intention to order the ~~sealing~~ expungement of all court files and records, law enforcement records other than entries in the adult court diversion program's centralized filing system, fingerprints, and photographs applicable to the proceeding. The court shall give the State's Attorney an opportunity for a hearing to contest the ~~sealing~~ expungement of the records. The court shall ~~seal~~ expunge the records if it finds:

~~(1)~~(A) two years have elapsed since the successful completion of the adult diversion program by the participant and the dismissal of the case by the State's Attorney;

~~(2)~~(B) the participant has not been convicted of a subsequent felony or misdemeanor during the two-year period, and no proceedings are pending seeking such conviction; and

~~(3)~~(C) rehabilitation of the participant has been attained to the satisfaction of the court.

(2) The court may expunge any records that were sealed pursuant to this subsection prior to July 1, 2018 unless the State's Attorney's office that prosecuted the case objects. Thirty days prior to expunging a record pursuant to this subdivision, the court shall provide written notice of its intent to expunge the record to the State's Attorney's office that prosecuted the case.

(3)(A) The court shall keep a special index of cases that have been expunged pursuant to this section together with the expungement order. The index shall list only the name of the person convicted of the offense, his or her

date of birth, the docket number, and the criminal offense that was the subject of the expungement.

(B) The special index and related documents specified in subdivision (A) of this subdivision (3) shall be confidential and shall be physically and electronically segregated in a manner that ensures confidentiality and that limits access to authorized persons.

(C) Inspection of the expungement order and the certificate may be permitted only upon petition by the person who is the subject of the case or by the court if the court finds that inspection of the documents is necessary to serve the interests of justice. The Chief Superior Judge may permit special access to the index and the documents for research purposes pursuant to the rules for public access to court records.

(D) The Court Administrator shall establish policies for implementing this subsection (g).

~~Upon~~ Except as otherwise provided in this section, upon the entry of an order ~~sealing such expunging~~ files and records under this section, the proceedings in the matter ~~under this section~~ shall be considered never to have occurred, all index references thereto shall be deleted, and the participant, the court, and law enforcement officers and departments shall reply to any request for information that no record exists with respect to such participant inquiry in any matter. Copies of the order shall be sent to each agency or official named therein.

~~(i) Inspection of the files and records included in the order may thereafter be permitted by the court only upon petition by the participant who is the subject of such records, and only to those persons named therein. [Repealed.]~~

(j) The process of automatically ~~sealing~~ expunging records as provided in this section shall only apply to those persons who completed diversion on or after July 1, 2002. Any person who completed diversion prior to July 1, 2002 must apply to the court to have his or her records ~~sealed~~ expunged. Sealing Expungement shall occur if the requirements of subsection (g) of this section are met.

\* \* \*

Sec. 12. 13 V.S.A. § 15 is added to read:

§ 15. USE OF VIDEO

(a) Except as provided by subsection (b) of this section, proceedings governed by Rules 5 and 10 of the Vermont Rules of Criminal Procedure and chapter 229 of this title shall be in person and on the record, and shall not be performed by video conferencing or other electronic means until the Defender



General and the Executive Director of the Department of Sheriffs and State's Attorneys execute a joint certification that the video conferencing program in use by the court at the site where the proceeding occurs adequately ensures attorney-client confidentiality and the client's meaningful participation in the proceeding.

(b) A proceeding at which subsection (a) of this section applies may be performed by video conferencing if counsel for the defendant or a defendant not represented by counsel consents.

Sec. 13. 13 V.S.A. § 2301 is amended to read:

§ 2301. MURDER-DEGREES DEFINED

Murder committed by means of poison, or by lying in wait, or by ~~wilful~~ willful, deliberate, and premeditated killing, or committed in perpetrating or attempting to perpetrate arson, sexual assault, aggravated sexual assault, kidnapping, robbery, or burglary; shall be murder in the first degree. All other kinds of murder shall be murder in the second degree.

Sec. 14. EARNED GOOD TIME; REPORT

On or before November 15, 2018, the Commissioner of Corrections, in consultation with the Chief Superior Judge, the Attorney General, the Executive Director of the Department of Sheriffs and State's Attorneys, and the Defender General, shall report to the Senate and House Committees on Judiciary, the Senate Committee on Institutions, and the House Committee on Corrections and Institutions on the advisability and feasibility of reinstating a system of earned good time for persons under the supervision of the Department of Corrections.

Sec. 15. EFFECTIVE DATE

This act shall take effect on passage.

And that after passage the title of the bill be amended to read:

An act relating to miscellaneous judiciary procedures.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

**Consideration Postponed**

**S. 197.**

Senator Sears, for the Committee on Judiciary, to which was referred Senate bill entitled:

An act relating to liability for toxic substance exposures or releases.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

\* \* \* Strict Liability; Toxic Substance Release \* \* \*

Sec. 1. 10 V.S.A. chapter 159, subchapter 5 is added to read:

Subchapter 5. Strict Liability for Toxic Substance Release

§ 6685. DEFINITIONS

As used in this subchapter:

(1) “Harm” means any personal injury or property damage.

(2) “Release” means any intentional or unintentional, permitted or unpermitted, act or omission that allows a toxic substance to enter the air, land, surface water, groundwater, or any other place where the toxic substance may be located in one or more of the following amounts:

(A) more than two gallons or pounds;

(B) two gallons or pounds or less if the amount released poses a potential or actual threat to human health; or

(C) for any toxic substance regulated under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675, as amended, the reportable quantity specified under 40 C.F.R. § 302.4.

(3)(A) “Toxic substance” means any substance, mixture, or compound that has the capacity to produce personal injury or illness to humans through ingestion, inhalation, or absorption through any body surface and that satisfies one or more of the following:

(i) the substance, mixture, or compound is listed on the U.S. Environmental Protection Agency Consolidated List of Chemicals Subject to the Emergency Planning and Community Right-To-Know Act, Comprehensive Environmental Response, Compensation and Liability Act, and Section 112(r) of the Clean Air Act;

(ii) the substance, mixture, or compound is defined as a “hazardous material” under 10 V.S.A. § 6602 or under rules adopted under 10 V.S.A. chapter 159;

(iii) testing has produced evidence, recognized by the National Institute for Occupational Safety and Health or the U.S. Environmental Protection Agency, that the substance, mixture, or compound poses acute or chronic health hazards;

(iv) the Department of Health has issued a public health advisory for the substance, mixture, or compound; or

(v) the Secretary of Natural Resources has designated the substance, mixture, or compound as a hazardous waste under 10 V.S.A. chapter 159.

(B) "Toxic substance" shall not mean:

(i) a pesticide regulated by the Secretary of Agriculture, Food and Markets; or

(ii) ammunition or components thereof, firearms, air rifles, discharge of firearms or air rifles, or hunting or fishing equipment or components thereof.

#### § 6686. LIABILITY FOR RELEASE OF TOXIC SUBSTANCES

(a) Any person who releases a toxic substance shall be held strictly, jointly, and severally liable for any harm resulting from the release.

(b) Any person held liable under subsection (a) of this section shall have the right to seek contribution from any other person who caused or contributed to the release. The right to contribution under this subsection shall include the right to seek contribution from a chemical manufacturer that released a toxic substance when a court determines that the manufacturer failed to warn a person of a toxic substance's propensity to cause the harm complained of.

(c) Nothing in this section shall be construed to supersede or diminish in any way existing remedies available to a person or the State at common law or under statute.

\* \* \* Medical Monitoring Damages \* \* \*

Sec. 2. 12 V.S.A. chapter 219 is added to read:

#### CHAPTER 219. MEDICAL MONITORING DAMAGES

##### § 7201. DEFINITIONS

As used in this chapter:

(1) "Disease" means any disease, ailment, or adverse physiological or chemical change linked with exposure to a toxic substance.

(2) "Exposure" means ingestion, inhalation, contact with the skin or eyes, or any other physical contact.

(3) "Medical monitoring damages" means the cost of medical tests or procedures and related expenses incurred for the purpose of detecting latent disease resulting from exposure.

(4) “Release” means any intentional or unintentional, permitted or unpermitted, act or omission that allows a toxic substance to enter the air, land, surface water, groundwater, or any other place where the toxic substance may be located in one or more of the following amounts:

(A) more than two gallons or pounds;

(B) two gallons or pounds or less if the amount released poses a potential or actual threat to human health; or

(C) for any toxic substance regulated under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675, as amended, the reportable quantity specified under 40 C.F.R. § 302.4.

(5)(A) “Toxic substance” means any substance, mixture, or compound that has the capacity to produce personal injury or illness to humans through ingestion, inhalation, or absorption through any body surface and that satisfies one or more of the following:

(i) the substance, mixture, or compound is listed on the U.S. Environmental Protection Agency Consolidated List of Chemicals Subject to the Emergency Planning and Community Right-To-Know Act, Comprehensive Environmental Response, Compensation and Liability Act, and Section 112(r) of the Clean Air Act;

(ii) the substance, mixture, or compound is defined as a “hazardous material” under 10 V.S.A. § 6602 or under rules adopted under 10 V.S.A. chapter 159;

(iii) testing has produced evidence, recognized by the National Institute for Occupational Safety and Health or the U.S. Environmental Protection Agency, that the substance, mixture, or compound poses acute or chronic health hazards;

(iv) the Department of Health has issued a public health advisory for the substance, mixture, or compound; or

(v) the Secretary of Natural Resources has designated the substance, mixture, or compound as a hazardous waste under 10 V.S.A. chapter 159; or

(vi) the substance, when released, can be shown by expert testimony to pose a potential threat to human health or the environment.

(B) “Toxic substance” shall not mean:

(i) a pesticide regulated by the Secretary of Agriculture, Food and Markets; or

(ii) ammunition or components thereof, firearms, air rifles, discharge of firearms or air rifles, or hunting or fishing equipment or components thereof.

§ 7202. MEDICAL MONITORING DAMAGES FOR EXPOSURE TO TOXIC SUBSTANCES

(a) A person with or without a present injury or disease shall have a cause of action for medical monitoring damages against a person who released a toxic substance if all of the following are demonstrated by a preponderance of the evidence:

(1) The person was exposed to the toxic substance as a result of tortious conduct by the person who released the toxic substance, including conduct that constitutes negligence, battery, strict liability, trespass, or nuisance;

(2) There is a probable link between exposure to the toxic substance and a latent disease.

(3) The person's exposure to the toxic substance increases the risk of developing the latent disease. A person does not need to prove that the latent disease is certain or likely to develop as a result of the exposure.

(4) Diagnostic testing is reasonably necessary. Testing is reasonably necessary if a physician would prescribe testing for the purpose of detecting or monitoring the latent disease.

(5) Medical tests or procedures exist to detect the latent disease.

(b) A court shall place the award of medical monitoring damages into a court-supervised program administered by a medical professional.

(c) If a court places an award of medical monitoring damages into a court-supervised program pursuant to subsection (c) of this section, the court shall also award to the plaintiff reasonable attorney's fees and other litigation costs reasonably incurred.

(d) Nothing in this chapter shall be deemed to preclude the pursuit of any other civil or injunctive remedy available under statute or common law, including the right of any person to recover for damages related to the manifestation of a latent disease. The remedies in this chapter are in addition to those provided by existing statutory or common law.

(e) This section does not preclude a court from certifying a class action for medical monitoring damages.

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\* \* \* Effective Date \* \* \*

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be amended as recommended by the Committee on Judiciary?, Senator Sears moved that consideration of the bill be postponed until Friday, March 16, 2018, which was agreed to.

**Adjournment**

On motion of Senator Mazza, the Senate adjourned until ten o'clock and twenty-five minutes in the morning.